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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,259	09/17/2003	Thomas L. Byers	OKC00085	3398

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EXAMINER	
VALENTI, ANDREA M	

ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 02/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/664,259	BYERS, THOMAS L.	
	Examiner	Art Unit	
	Andrea M. Valenti	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 November 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9,11-13,15-23 and 25-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *22,23 and 31-33* is/are allowed.

6)☒ Claim(s) *1-9, 11-13, 15-21, 25-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *17 September 2003* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a) because they fail to show the "means for facilitating said flow of atmospheric air" as the ***combination*** of the cover assembly 112, the heating unit 132, the fan unit 134 and the cooled air unit 170 as described in the specification on page 11 lines 1-4. The drawings fail to show the structure that contains the combination of all these elements at one time. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 18-21 and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant has indicated on page 11 of the specification that the "means for facilitating said flow of atmospheric air" will be understood to correspond to the cover assembly (112), the heating unit (132), the fan (134) and the cooled air unit (170). However, applicant does not indicate how all these elements are used simultaneously together in combination, nor has applicant provided an illustration of the device containing all of these elements being used together in combination. Thus, the combination of all of the devices collectively together have not been disclosed. The only combinations disclosed have been first the cover by itself; second the cover, fan, and heating unit; third the heater and cover; and fourth the fan and a cooling unit. Therefore, the examiner is only required to find one of these four combinations to meet the limitations of the claim.

Claims 19-20 are rejected as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-4, 11-13, 15, 18, 26, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,575,239 to Bradburn et al in view of U.S. Patent No. 2,625,094 to Bonforte.

Regarding Claims 1 and 18, Bradburn teaches modular animal enclosure, comprising: a housing comprising a base portion and a top portion (Bradburn Fig. 1 #100 and 200) attached to the base portion to form a sheltered interior, the housing including a door aperture (Bradburn Fig. 1 #30) to permit ingress of an animal into said interior.

Bradburn teach a building (i.e. animal enclosure building) with a climate conditioning aperture (Bradburn Fig. 5 #230), but is silent on a climate conditioning aperture to accommodate a flow of atmospheric air between the interior and an external environment, and a climate conditioning unit configured for removeable attachment to the housing adjacent the climate conditioning aperture, the climate conditioning unit contactingly supported by a top surface of the housing at a position a selected distance away from the climate conditioning aperture so as to form a gap there between, the climate conditioning unit facilitating said flow of atmospheric air through the gap and

through the climate conditioning aperture to the interior and a fastener inserted through a flange to attach the climate conditioning unit to the housing.

However, Bonforte teaches a climate conditioning aperture (Bonforte #38) to accommodate a flow of atmospheric air between the interior and an external environment, and a climate conditioning unit (Bonforte Fig. 2 #10) configured for removeable attachment to the housing adjacent the climate conditioning aperture, the climate conditioning unit contactingly supported by a top surface of the housing at a position a selected distance away from the climate conditioning aperture so as to form a gap there between, the climate conditioning unit facilitating said flow of atmospheric air through the gap and through the climate conditioning aperture to the interior and a fastener inserted through a flange to attach the climate conditioning unit to the housing (Bonforte Fig. 2 #16 and 14). It would have been obvious to one of ordinary skill in the art to modify the teachings of Bradburn with the building teachings of Bonforte at the time of the invention since the modification is merely an engineering design choice involving the selection of a known alternate equivalent climate conditioning location and configuration for a building structure performing the same intended function modified for the known advantage of the water proof features in horizontal rain conditions (Bonforte Col. 2 line 25).

Regarding Claim 2, Bradburn as modified teaches wherein the climate conditioning unit comprises a cover assembly comprising a plate member (Bonforte Fig. 2 #28) having a cross-sectional area greater than the cross-sectional area of the climate conditioning aperture (Bonforte Fig. 2 #38), wherein the plate member is supported by

the top surface of the housing at least at one location adjacent to, and outside of, the climate conditioning aperture (Bonforte Fig. 2 #14 and 16).

Regarding Claim 3, Bradburn as modified teaches wherein the flange (Bradburn Fig. 2 #14) projects from the plate member adjacent the top surface of the housing.

Regarding Claim 4, Bradburn as modified teaches wherein an insertion depth of the fastener (Bonforte #17) *can be* (functional language i.e. "capable of") slidingly adjusted to alter a cross-sectional thickness of the gap between the cover assembly and the top cover.

Regarding Claim 11, Bradburn as modified teaches the climate conditioning aperture is substantially rectangular in cross-sectional extent (Bonforte #38).

Regarding Claim 12, Bradburn as modified is silent on the rectangular cross-sectional extent has a minimum dimension of at least four inches. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Bradburn at the time of the invention since the modification is merely a change in size to adjust the amount of air flow and does not present a patentably distinct limitation.

Regarding Claim 13, Bradburn as modified teaches wherein the top portion (Bradburn #200) is sized to nest within the base portion (Bradburn #100) when the top portion is inverted.

Regarding Claim 15, Bradburn as modified teaches the climate conditioning aperture is centered in the top portion over the sheltered interior of the housing (Bonforte teaches the roof center Fig. 1).

Regarding Claim 26, Bradburn as modified teaches wherein the fastener extends into a non- through hole in the housing (Bonforte Fig. 2 #16 do not go all the way through #18).

Regarding Claim 27, Bradburn as modified teaches the climate conditioning unit is characterized as a first climate conditioning unit (Bonforte ##10), but is silent on the animal enclosure further comprises a second climate conditioning unit configured for removeable attachment to the housing adjacent the climate conditioning aperture in lieu of the first climate conditioning unit so that the second climate conditioning unit is contactingly supported by the top surface of the housing at a position a selected distance away from the climate conditioning aperture so as to form a gap there between, the second climate conditioning unit facilitating said flow of atmospheric air through the gap and through the climate conditioning aperture to the interior. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Bradburn at the time of the invention with a second climate conditioning unit to replace the first one if the first on is broken.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,575,239 to Bradburn et al in view of U.S. Patent No. 2,625,094 to Bonforte as applied to claim 1 above, and further in view of U.S. Patent No. 3,223,018 to Tucker.

Regarding Claim 6, Bradburn as modified is silent on the climate conditioning unit comprises a fan unit which directs increased velocity ambient air through the climate conditioning aperture. However, Tucker teaches a fan unit in combination with a

building climate conditioning aperture (Tucker Fig. 7 element F). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Bradburn with the teachings of Tucker for the known advantage of helping to assist the flow of air for improved circulation as taught by Tucker.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,575,239 to Bradburn et al in view of U.S. Patent No. 2,625,094 to Bonforte as applied to claim 1 above, and further in view of U.S. Patent No. 5,551,371 to Markey et al.

Regarding Claim 16, Bradburn is silent on a sensor, which detects an ambient condition, and wherein the climate conditioning unit operates in response to said detected ambient condition. However, Markey et al teaches a building enclosure with a climate conditioning aperture in the roof with a climate conditioning unit that operates in response to detected ambient conditions of a sensor (Markey #152 and Col. 5 line 7). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Bradburn with the teachings of Markey at the time of the invention for the advantage of assisting the flow of air through the enclosure for better circulation and for the energy efficient advantages of operating the fan only at desired temperatures and not continuously (i.e. energy conservation).

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,575,239 to Bradburn et al in view of U.S. Patent No. 2,625,094 to Bonforte

and U.S. Patent No. 3,223,018 to Tucker as applied to claims 1 and 6 above, and further in view U.S. Patent No. 5,755,181 to Petkovski.

Regarding Claim 17, Bradburn as modified teaches a climate conditioning unit that operates on and off (Tucker element F), but is silent on an animal proximity sensor, which detects the presence of the animal within the interior, and wherein the climate conditioning unit operates in response to said detected presence of the animal. However, Petkovski teaches an animal proximity sensor that detects the presence of the animal with in an interior and a climate conditioning unit operates in response (Petkovski #44 and Col. 3 line 9). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Bradburn with the teachings of Petkovski at the time of the invention since motion sensors are old and notoriously well-known devices selected by one of ordinary skill in the art for the advantage of energy conservation

Claims 1, 5, 9, 27 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,443,387 to Gordon et al in view of U.S. Patent No. 2,625,094 to Bonforte.

Regarding Claims 1 and 18, Gordon teaches modular animal enclosure (Gordon Fig. 1), comprising: a housing comprising a base portion and a top portion (Gordon Fig. 1 base the uprights of the corral and top #12) attached to the base portion to form a sheltered interior, the housing including a door aperture (Gordon Fig. 1 the space between the uprights) to permit ingress of an animal into said interior. Gordon teaches a climate conditioning aperture (Gordon Fig. 1 opening in element #13 that receives

element 10) to accommodate a flow of atmospheric air between the interior and an external environment, and a climate conditioning unit (Gordon #10) configured for removeable attachment to the housing adjacent the climate conditioning aperture, the climate conditioning unit contactingly supported by a top surface of the housing at a position a selected distance away from the climate conditioning aperture so as to form a gap there between, the climate conditioning unit facilitating said flow of atmospheric air through the gap and through the climate conditioning aperture to the interior

Gordon teaches brackets (Gordon #18), but is silent on a fastener inserted through a flange to attach the climate conditioning unit to the housing. However, Bonforte teaches attaching a climate conditioning unit to a housing by a fasterner inserted through a flange (Bonforte Fig. 2 #16 and 14). It would have been obvious to one of ordinary skill in the art to modify the teachings of Gordon with the teachings of Bonforte at the time of the invention since the modification is merely an engineering design choice involving the selection of a known alternate equivalent means of fastening selected for the advantage that it can applied to flat and slanted roof types (Bonforte Col. 1 line 12-13).

Regarding Claim 5, Gordon as modified teaches the climate conditioning unit comprises a cooled air unit which supplies cooled air to the interior (Gordon Col. 2 line 61)

Regarding Claim 9, Gordon teaches the climate conditioning unit extends through the climate conditioning aperture and into the housing interior (Gordon Fig. 3 #66).

Regarding Claim 27, Gordon as modified teaches the climate conditioning unit is characterized as a first climate conditioning unit (Gordon #10), but is silent on the animal enclosure further comprises a second climate conditioning unit configured for removeable attachment to the housing adjacent the climate conditioning aperture in lieu of the first climate conditioning unit so that the second climate conditioning unit is contactingly supported by the top surface of the housing at a position a selected distance away from the climate conditioning aperture so as to form a gap there between, the second climate conditioning unit facilitating said flow of atmospheric air through the gap and through the climate conditioning aperture to the interior. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Gordon at the time of the invention with a second climate conditioning unit to replace the first one if the first on is broken.

Claims 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,443,387 to Gordon et al in view of U.S. Patent No. 2,625,094 to Bonforte as applied to claims 1 and 27 above, and further in view of U.S. Patent No. 2689,906 to Corbett.

Regarding Claims 28-30, Gordon as modified teaches the climate conditioning unit does not comprise a radiant heat source, but is silent on the alternate climate conditioning unit with a radiant heat source. Gordon as modified teaches it is known to have a climate conditioning unit for cooling including a fan and Corbett teaches it is known to combine a climate conditioning unit for radiant heating with a fan. It is old and

notoriously well-known to regulate the temperature of both human and animal enclosures for the comfort of the occupant. Merely the selection of known radiant heating means to accomplish this comfort level would have been obvious to one of ordinary skill, i.e. one of general knowledge. Merely cited as examples of general knowledge that it is known to regulate the temperature of an animal enclosure in order to either heat or cool the structure are U.S. Patent 6,637,374 and U.S. Patent No. 5,887,436. It would have been obvious to one of ordinary skill in the art to further modify the teachings of Gordon with the teachings of Corbett at the time of the invention since the modification is merely the selection of a known alternate climate conditioning unit selected for the same intended use of provide environmental comfort to the occupants of an enclosure selected for use in colder climates or winter months.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,575,239 to Bradburn et al in view of U.S. Patent No. 2,625,094 to Bonforte and U.S. Patent No. 3,223,018 to Tucker as applied to claims 1 above, and further in view U.S. Patent No. 2,689,906 to Corbett.

Regarding Claims 7 and 8, Bradburn as modified teaches a climate conditioning aperture, an animal enclosure, and a climate conditioning unit including a fan, but is silent on the climate conditioning unit comprises a heating unit which supplies heated air to the interior or the climate conditioning unit comprises a radiant heat source which directs radiant heat into the interior. However, Corbett teaches a radiant heat source (Corbett #24) in combination with a climate conditioning fan (Corbett #18) unit in a

ceiling/roof structure of a building/enclosure. It would have been obvious to one of ordinary skill in the art to further modify the teachings of Bradburn as modified by Bonforte and Tucker with the teachings of Corbett at the time of the invention for providing heat to the structure on cold days. It is old and notoriously well-known to regulate the temperature of an both human and animal enclosures for the comfort of the occupant. Merely the selection of known radian heating means to accomplish this comfort lever would have been obvious to one of ordinary skill, i.e. one of general knowledge. Merely cited as examples of general knowledge that it is known to regulate the temperature of an animal enclosure in order to either heat or cool the structure are U.S. Patent 6,637,374 and U.S. Patent No. 5,887,436.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,443,387 to Gordon et al in view of U.S. Patent No. 2,625,094 to Bonforte as applied to claim 18 above, and further in view U.S. Patent No. 2,342,211 to Newton.

Regarding Claim 21, Gordon as modified is silent on further comprising means for detecting an ambient condition, and wherein the facilitating means is operationally responsive to the detecting means (applicant has invoked 112th 6th paragraph and thus means for is taken to be a thermostatic switch and photoelectric sensor as identified in the specification page 11). However, Newton teaches that it is notoriously old and well-known to utilize both thermostatic switches and photoelectric sensors in combination (Newton page 4, first column, line 36-37 and page 5, second column, line 14). It would have been obvious to one of ordinary skill in the art to further modify the teachings of

Gordon with the teachings of Newton at the time of the invention for the known advantage of automated control of the unit for energy conservation so the unit automatically operates only at desired times instead of continuously and to accommodate that varying temperatures between night and day as taught by Newton.

Allowable Subject Matter

Claim 22, 23, 31-33 are allowed.

Response to Arguments

Applicant's arguments with respect to claims 1-9, 11-13, 15-21, 25-30 have been considered but are moot in view of the new ground(s) of rejection.

Regarding Claims 19 and 20, the examiner has given patentable weight to applicants indication of the means plus function language i.e. applicant has invoked 112th 6th paragraph. In claim 19, means for allowing pivotal movement of the top portion with respect to the base portion in alternate, opposing first and second directions is and for impeding initiation of said pivotal movement in said opposing first and second directions is defined on page 11 of the specification as applicant's elements #204, 260, 202. In claim 20, means for sensing the presence of the animal within the interior, and wherein the facilitating means is operationally responsive to the sensing means to be the combination of as depicted in figure is defined on page 11 of the specification as a photoelectric sensor and a pressure detector pad combination.

Examiner encourage applicant to includes additional structural limitations of the animal enclosure to claim 29 to distinguish the enclosure from a house or shed or any generic building with a floor and roof.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andrea M. Valenti
Patent Examiner
Art Unit 3643

15 February 2006